

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRED FIELDS,
Plaintiff, .
v.
THREE CITIES RESEARCH, INC., a)
Delaware corporation or)
partnership, THREE CITIES FUND)
III, L.P., a Delaware limited)
partnership, TCR FRIENDS III,)
L.L.C., a Delaware limited)
liability company, TCR CO-)
INVESTORS III, L.L.C., a Delaware)
limited liability company, TCR GP,)
L.L.C., a Delaware limited)
liability company, TCR MANAGEMENT,)
INC., a Delaware corporation,)
COMPOSICORP HOLDINGS, LLC, a)
Florida limited liability company,)
WILLEM F.P. DE VOGEL, an)
individual as "partner" of Three)
Cities Research, Inc., W. ROBERT)
WRIGHT, an individual as "partner")
of Three Cities Research, Inc.,)
THOMAS G. WELD, an individual as)
"partner" of Three Cities)
Research, Inc., J. WILLIAM UHRIG,)
an individual as "partner" of)
Three Cities Research, Inc.,)
RICHARD WENTWORTH, an individual)
and as member of board of)
directors of CMC Acquisition)
Company, Inc. and The Coe)
Manufacturing Company, DANIEL)
HORN BARGER, an individual and as)
member of board of directors of)
CMC Acquisition Company, Inc. and)
The Coe Manufacturing Company,)
DARRYL DILLENBACK, an individual)

Civ. No. 02-975-AA

OPINION AND ORDER

1 and as member of board of)
2 directors of CMC Acquisition)
3 Company, Inc. and The Coe)
4 Manufacturing Company, JAMES)
5 WOJTELA, an individual and as)
6 member of board of directors of)
7 CMC Acquisition Company, Inc. and)
8 The Coe Manufacturing Company,)
9
10 Defendants.
11)
12

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30 III, TCR Friends III, TCR Co-Investors III, TCR Management, Inc.,
31 Willem F.P. de Vogel, W. Robert Wright, Thomas G. Weld, J. William
32 Uhrig, Daniel Hornbarger, Darryl Dillenback, and James Wojtila

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39 Attorneys for defendant Richard Wentworth

40 AIKEN, Judge:

41 Plaintiff Fred Fields filed suit against defendants alleging
42 breach of Guaranty and Seller **Note**, tortious interference with
43 contract, tortious breach of the covenant of good faith and fair
44 dealing, and breach of fiduciary duty. Plaintiff's claims arise from
45 the sale of plaintiff's stock in his business, The Coe Manufacturing

1 Company (Coe), to a holding company, CMC Acquisition Company (CMC).
2 Plaintiff alleges that at all material times, defendant Three Cities
3 Research, Inc. controlled CMC and negotiated the Stock Purchase
4 Agreement for CMC.

5 Defendants seek dismissal for lack of personal jurisdiction and
6 for failure to state a claim. See Fed. R. Civ. P. 12(b)(2) and (6).
7 **On March 13, 2003, the court heard oral argument on defendants' motions**
8 and on April 9, 2003, at the court's request, defendants submitted
9 additional information about a stock transaction involving Coe. On
10 April 28, plaintiff responded, claiming that defendants did not provide
11 all of the information relevant to the transaction and requesting that
12 the court compel production of additional documents.

13 Upon review of the briefing, arguments, and supplemental
14 information provided, **defendants' motions are granted, in part, and**
15 plaintiff's motion to compel is denied.

16 I. PARTIES

17 Plaintiff is an Oregon resident and former owner of Coe
18 Manufacturing. Coe is an Ohio corporation that manufactures capital
19 equipment and machinery for customers who manufacture gypsum, lumber,
20 engineered lumber, composite board, and rubber composites.

21 Defendant Three Cities Research, Inc. (TCR) is Delaware
22 corporation with its principal place of business in New York City. TCR
23 **is a private equity firm that invests capital in various medium-sized**
24 **businesses operating in established industries.**

25 **Defendant TCK Management Inc. is a Delaware corporation with its**
26 **principal place of business in New York City.**

27 Defendant Three Cities Fund III, LP, (TCF III) is a Delaware
28 limited partnership, with its principle place of business in New York

1 City. The general partner of TCF III is TCR Associates III, LLC, a
2 Delaware limited liability company. The managing member of TCR
3 Associates III is TCR GP LLC, a Delaware limited liability company.

4 Defendant TCR Friends III LP is a Delaware limited partnership
5 with its principal place of business in New York City. The general
6 partner of TCR Friends III is TCR Associates III.

7 TCR Co-Investors III, LLC is a Delaware limited liability company
8 with its principal place of business in New York City.

9 CMC is a holding company incorporated under the laws of Delaware
10 in October 1999. CMC was formed to acquire Coe from plaintiff. TCF
11 III, TCR Friends III, and TCR Co-Investors III, as managed by TCR, own
12 ninety-five percent of CMC's stock. Composicorp Holdings LLC, a
13 Florida limited liability company, owns the remaining five percent.¹

14 Defendant Willem de Vogel holds the title of President at TCR and
15 TCR Management. De Vogel is a managing member of defendants TCR GP and
16 TCR Co-Investors III, and he is also a member of TCR Associates III.
17 De Vogel is a resident of New York.

18 Defendant W. Robert Wright holds the title of Managing Director
19 at TCR and the title of President of CMC. Wright is a resident of
20 Colorado.

21 Defendant Thomas Weld holds the title of Managing Director at TCR.
22 Weld is a resident of Connecticut.

23 Defendant J. William Uhrig holds the titles of Secretary and
24 Managing Director at TCR. Uhrig is a resident of New York.

25 Defendant Richard Wentworth is a Director of CMC and is a resident
26 of Florida.

27
28 'Although Composicorp Holdings is named as a defendant, it has not
been served and has not appeared in this action.

Defendant Daniel Hornbarger holds the title of Principal at TCR and is a Director of CMC. Hornbarger is a resident of New York.

Defendant Darryl Dillenback is President and Chief Executive Officer of Coe and is a Director of Coe and CMC.

Defendant James Wojtila is the Chief Financial Officer of Coe and an Officer of CMC. Wojtila is a resident of Ohio.

II. BACKGROUND

In late 1999, defendant de Vogel and other representatives of TCR negotiated the possible acquisition of Coe from plaintiff. TCR entered the negotiations on behalf of TCF III, TCR Friends III, and TCR Co-Investors III (hereinafter Fund III Investors), who subsequently formed CMC to acquire Coe. See Declaration of Willem F.P. de Vogel, p. 4. As alleged in plaintiff's Complaint, plaintiff suspended the negotiations with TCR in mid-November 1999 and terminated the negotiations in January 2000. In early February 2000, the negotiations between plaintiff and the representatives of TCR resumed.

On February 8, 2000, CMC's first Board of Directors - comprised of defendant Wright, Jeanette Welsh and H. Whitney Wagner - met at TCR's New York City offices and approved the purchase of 42,500 shares of Coe common stock for \$66,484,486.

On April 28, 2000, plaintiff sold his stock in Coe to CMC pursuant to a Stock Purchase Agreement dated March 8, 2000. As part of the purchase price, plaintiff agreed to accept a Subordinated Note (Seller Note) from CMC, dated April 28, 2000, under which CMC would pay plaintiff \$10,000,000 plus interest over five years. The parties also negotiated a Consulting and Noncompetition Agreement between Coe and plaintiff, under which Coe would pay plaintiff \$5,450,000 over three years. CMC accepted the terms of a Guaranty to secure Coe's

1 performance under the Consulting Agreement. Plaintiff alleges that the
2 Stock Purchase Agreement, the Seller Note, the Guaranty, and the
3 Consulting Agreement were negotiated and executed in Oregon.

4 On October 27, 2000, de Vogel accused plaintiff of deliberately
5 misrepresenting and omitting material facts about Coe's financial
6 status and fraudulently inducing CMC to purchase Coe. Affidavit of
7 Chad Paulson, Ex. 28. CMC suspended payment to plaintiff under the
8 purchase agreement and claimed millions of dollars in damages caused
9 by plaintiff's fraud and misconduct.² After CMC and Coe failed to pay
10 plaintiff under the Seller Note, Guaranty and Consulting Agreement,
11 plaintiff accelerated the due dates under those agreements.

12 In July 2001, plaintiff filed suit against CMC, alleging breach
13

14 ²De Vogel's letter provided, in pertinent part:

15 After buying Coe Manufacturing Company . . . from you on April
16 28, 2000, we have been shocked and dismayed at the state of
17 the business we purchased. . . . Although we are working to
18 quantify the impact of these issues, which we only recently
19 discovered, it has become clear that even this short time that
20 the amount of damages far exceeds anything that can be
addressed in a discussion of mere indemnification under the
Stock Purchase Agreement; further, limits on indemnification
are inapplicable in cases of fraud or intentional
misrepresentation (as reflected in Section 10.6.5 of the Stock
Purchase Agreement).

21 ***

22 In short, it appears that we were fraudulently induced to
23 enter into the transaction to execute the Stock Purchase
24 Agreement, the Subordinated Note and the Consulting and Non-
Competition Agreement. Based on the fraud, material
25 misrepresentations and fraudulent inducement that we believe
infect the transaction, we are requesting either a rescission
of the transaction . . . or an alternative solution

26 ***

27 Pending resolution of these matters, for the reasons set forth
28 above, we are suspending all payments on your subordinated
note and under your consulting contract.

1 of the Seller Note and CMC's Guaranty of the consulting agreement.
2 Fields v. CMC Acquisition Co., Civ. No. 01-1131-ST (D. Or. 2001). CMC
3 counterclaimed for fraudulent inducement and breach of representation
4 and warranties.

5 On July 23, 2001, de Vogel again wrote to plaintiff. De Vogel
6 informed plaintiff that Coe's equity had no value, and consequently
7 "CMC's only asset is worthless and not all of its obligations can be
8 honored." Paulson Affidavit, Ex. 29, p. 1. De Vogel represented that
9 "[a]ny investor willing to put cash into Coe will only do so directly,
10 and not through CMC. Thus CMC's interest in Coe has the potential to
11 be diluted in such a recapitalization." Id. De Vogel then made a
12 settlement offer to resolve plaintiff's claims against CMC.

1:3 In a memorandum to de Vogel dated February 15, 2000, Coe's chief
14 financial officer, defendant Wojtila, described Coe's financial
15 difficulties and requested an "immediate capital infusion of \$3
16 million" from TCR. Defendants' Memorandum Regarding Coe Manufacturing
17 Company's Capital Infusion, Ex. 3. In explaining the need for capital,
18 Wojtila stated, "We have made strong improvements in customer relations
19 over the past two years since TCR has acquired the Company. We are
20 excited about the many opportunities before us for 2002 and cannot
21 afford an impediment of this nature." Id.

2:2 On February 22, 2002, Coe adopted resolutions and amendments to
2:3 its Articles of Incorporation which authorized the issuance and sale
2:4 of 30,000 shares of convertible preferred stock to Coe Funding, Inc.
2:5 for \$3,000,000. Coe Funding, Inc. was formed to purchase the newly-
2:6 issued Coe stock and raised the \$3,000,000 by selling shares of its
2:7 stock to TCF III, one of the Fund III Investors which owns a
213 controlling interest in CMC. CMC approved the amendment and resolution

1 to Coe's Articles of Incorporation which authorized the issuance of the
2 preferred stock. Paulson Affidavit, Ex. 30, p.2.³

3 After this transaction, CMC held 100 percent of Coe's common stock
4 and Coe Funding held 30,000 of Coe's convertible preferred stock, which
5 constitutes ninety-seven percent of Coe's equity upon conversion.
6 Thus, CMC's ownership of Coe was diluted from 100 percent to
7 approximately three percent.

8 On February 28, 2002, defendant TCF III sent its investors an
9 update on its portfolio and activities, which included the following
10 description of activities involving Coe:

11 Coe Manufacturing (capital equipment for wood products) is
12 responsible for \$18.5 million of unrealized loss. As most
13 of you will remember, the company had problems with seller
14 misrepresentations in addition to which, the wood products
15 and building products manufacturers cut back drastically on
16 their capital expenditures. All of this resulted in
17 downsizing, all of which is old news for you. What is new
18 is that while the company is optimistic that 2002 will see
19 a modest upturn in orders, and in fact January saw some of
20 this actually happening, unfortunately cash became too tight.
21 Thus we did a \$3 million cash increase into Coe. The
22 increase was done in a way to moot the dispute with the
23 seller; we hope that logic will prevail and result in a
24 settlement.

25 Paulson Affidavit, Ex. 31.

26 On or about July 13, 2002, CMC filed a Chapter 7 bankruptcy
27 petition in the District of Delaware, and plaintiff's suit against CMC
28 was stayed. CMC's bankruptcy proceeding was subsequently transferred
29 to the District of Ohio where it remains pending.

30 On July 22, 2002, plaintiff filed this action. Plaintiff asserts
31 claims against TCR and its individual "partners," the Fund III
32 Investors, and the directors and shareholders of CMC.

33 On the facsimile coversheet to his signature page approving the
34 sale, defendant Richard Wentworth wrote, "Russ & Mark, We should be sure
35 to get our shares of the new entity." Paulson Affidavit, Ex. 30, p. 1.

1 Plaintiff alleges breach of the Guaranty and Seller Note, tortious
2 breach of the covenant of good faith and fair dealing, and tortious
3 inference with a contract against TCR and its partners. Plaintiff
4 alleges that TCR caused CMC to breach the agreements with plaintiff by:
5 1) failing to make the first annual payment and subsequent payments
6 pursuant to the Seller Note; 2) failing to make payments due under the
7 Consulting Agreement Guaranty; and 3) causing CMC to dilute its
8 ownership in Coe through the issuance of Coe preferred stock.
9 Plaintiff alleges that TCR may be held liable for CMC's alleged
10 contractual breaches under the theory of alter ego liability.
11 Plaintiff argues that TCR exercised control over CMC, inadequately
12 capitalized CMC for payment of the Consulting Agreement Guaranty as it
13 became due, and deliberately manipulated CMC's ownership in Coe to
14 prevent plaintiff from collecting judgment against CMC. Plaintiff
15 alleges that individual defendants de Vogel, Wright, Weld, and Uhrig
16 are liable for CMC's breach as "partners" of TCK.

17 Plaintiff alleges claims for breach of the Seller Note and
18 Guaranty against the Fund III Investors. Plaintiff maintains that the
19 Fund III investors may be held liable for CMC's alleged breaches,
20 because TCR was acting as their agent when TCR exercised control over
21 CMC and engaged in the allegedly improper conduct.

22 Finally, plaintiff alleges claims for breach of the Seller Note
23 and Guaranty and breach of fiduciary duty to a creditor against
24 individual defendants Wentworth, Hornbarger, Dillenback, and Wojtila.
25 Plaintiff alleges that these defendants, as Directors of CMC, had a
26 fiduciary duty to plaintiff as a creditor, and they allowed TCR to
27 "strip" CMC of assets that would otherwise have been available to meet
28 CMC's obligations to plaintiff.

1 Defendants move for dismissal under Federal Rule of Civil
2 Procedure 12(b) (2), claiming that the court lacks personal jurisdiction
3 over them. Alternatively, defendants move for dismissal under Federal
4 Rule Civil Procedure 12(b)(7) for failure to join CMC as an
5 indispensable party. Finally, defendants move for dismissal under
6 Federal Rule Civil Procedure 12(b)(6) for failure to state a claim upon
7 which relief may be granted.

8 III. JURISDICTIONAL STANDARDS

9 Determining whether personal jurisdiction exists over an out-of-
10 state defendant involves two inquiries: whether the forum state's long-
11 arm statute permits the assertion of jurisdiction and whether assertion
12 of personal jurisdiction violates federal due process. Fireman's Fund
13 Ins. co. v. National Bank of Cooperatives, 103 F.3d 888, 893 (9th Cir.
14 1996); Chan v. Society Expeditions, Inc., 39 F.3d 1398, 1404-05 (9th
15 Cir. 1994). Oregon's catch-all jurisdictional rule confers personal
16 jurisdiction coextensive with due process. Or. R. Civ. P. 4L. Thus,
17 the analysis collapses into a single framework and the court proceeds
18 under federal due process standards.

19 Due process requires that a defendant, if not present in the
20 state, "have certain minimum contacts with it such that the maintenance
21 of the suit does not offend traditional notions of fair play and
22 substantial justice." International Shoe Co. v. Washington, 326 U.S.
23 310, 316 (1945) (internal citation and quotation marks omitted).
24 Minimum contacts can be demonstrated through facts supporting either
25 general or specific jurisdiction over the defendant. See Helicopteros
26 Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 & n.8 (1984).

27 General jurisdiction refers to the authority of a court to hear
28 any cause of action involving a defendant, regardless of whether the

1 cause of action arose from the defendant's activities within the forum
2 state. Helicopteros, 466 U.S. at 414 & n.9, 415. In order for a court
3 to assert general jurisdiction, the defendant must have "continuous and
4 systematic" contacts with the forum state. Id. at 416. Factors
5 relevant to this analysis include whether the defendant "makes sales,
6 solicits or engages in business in the state, serves the state's
7 markets, designates an agent for service of process, holds a state
8 license, or is incorporated there." Bancroft & Masters, Inc. v.
9 Aususta National, Inc., 223 F.3d 1082, 1086 (9th Cir. 2000).

10 If general jurisdiction is not established, a court may exercise
11 specific jurisdiction if the cause of action arises directly from a
12 defendant's contacts with the forum state. See Sher v. Johnson, 911
13 F.2d 1357, 1361 (1990). The Ninth Circuit employs a three-part test
14 to determine whether the exercise of specific jurisdiction comports
15 with due process. Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir.
16 1995).

17 First, the defendant must perform some act or consummate some
18 transaction by which it "purposefully avails" itself of the privilege
19 of conducting activities in the forum, thereby invoking the benefits
20 of the forum and having "fair warning" that a particular activity may
21 subject it to jurisdiction. Id.; see also Buraer King v. Rudzewicz,
22 471 U.S. 462, 472 (1985). Second, the claim must be one which arises
23 out of or results from the defendant's forum-related activities.
24 Ballard, 65 F.3d at 1500. Third, the court's exercise of jurisdiction
25 must be reasonable. Id.

26 Plaintiff bears the burden of establishing personal jurisdiction
27 through a *prima facie* showing of jurisdictional facts. American
28 Telephone & Telegraph Co. v. Compaqnie Bruxelles Lambert, 94 F.3d 586,

1 588 (9th Cir. 1996); Farmers Ins. Exchange v. Portage La Prairie Mut.
2 Ins. Co., 907 F.2d 911, 912 (9th Cir. 1990). To meet this burden,
3 plaintiff "need only demonstrate facts that if true would support
4 jurisdiction over the defendant." Harris Rutskv & Co. Insurance
5 Services, Inc. v. Bell & Clements Limited, 328 F.2d 1122, 1129 (9th
6 Cir. 2003) (internal quotation marks and citation omitted). Unless
7 directly contradicted, the allegations of the complaint are accepted
8 as true and disputed facts must be resolved in plaintiff's favor. Id.
9 (quoting Doe, I v. Unocal Corp., 248 F.3d 915, 922 (9th Cir. 2001) (per
10 curiam)); see also Ziegler v. Indian River County, 64 F.3d 470, 474
11 (9th Cir. 1995).

12 IV. ANALYSIS

13 Defendants argue that this court cannot entertain jurisdiction
14 over them because they lack the requisite "minimum contacts" with this
15 forum. Plaintiff counters that TCR, the Fund III Investors, and
16 individual defendants have sufficient contacts with Oregon by virtue
17 of TCR's negotiations with plaintiff to acquire Coe, and by attributing
18 CMC's contacts with Oregon to TCR under the theory of alter ego
19 liability.

20 A. General Jurisdiction

21 1. TCR and Fund III Investors

22 TCR and the Fund III Investors emphasize that all were formed
23 under the laws of Delaware **and maintain principal places of business**
24 in New York City. None is incorporated in Oregon and none has a
25 principal place of business or a physical presence in Oregon. TCR and
26 the Fund III Investors have no offices, showrooms, warehouses, real
27 property, or telephone listings in Oregon. They have not designated
28 registered agents for service and have no regular business contacts in

1 Oregon. TCR and the Fund III Investors do not conduct sales or engage
2 in business in Oregon, and they do not advertise business in Oregon
3 periodicals. Some employees or agents of the TCR entities have
4 traveled to Oregon infrequently for business trips.

5 Despite the lack of "continual and systematic" contacts with
6 Oregon, plaintiff claims that general jurisdiction may be had through
7 TCR's and the Fund III Investor's business relationships with Oregon
8 companies. Plaintiff emphasizes that TCR has invested in four
9 "portfolio" companies - Factory 2-U Stores, Inc. Noah's Bagel Corp.,
10 Masterplan Inc., and Finn Corp. - that own or operate retail businesses
11 or conduct sales activity in Oregon.

13 However, plaintiff offers no legal authority for the rather novel
13 proposition that investing in or contracting with a third party who has
14 contacts in the forum state provides sufficient contacts for general
15 jurisdiction. See Bancroft & Masters, 223 F.3d at 1086 ("[E]ngaging
16 in commerce with residents of the forum state is not in and of itself
17 the kind of activity that approximates physical presence within the
18 state's borders."); Gates Learjet Corp. v. Jensen, 743 F.2d 1325, 1331
19 (9th Cir. 1984) (several visits and purchases in forum, solicitation
20 of a contract in the forum including choice of law provision favoring
21 forum, and communication within forum were not "continual and
22 systematic" or "substantial"); Jemez Agency, Inc. v. Cigna Corp., 866
23 F. Supp. 1340, 1348 (D.N.M. 1994) ("[D]ue process renders
24 constitutionally infirm any attempt to hold a shareholder, whether an
25 individual or a corporation, subject to the personal jurisdiction of
26 an out-of-state forum by the mere fact that the corporation in which
27 that shareholder has invested does business there."). Therefore, I
28 find that plaintiff fails to establish general jurisdiction over TCR

1 or the Fund III Investors.

2 2. Individual Defendants

3 With respect to the individual defendants, none is a resident of
4 Oregon. None maintains residences or bank accounts or regularly
5 conducts business in Oregon. With one exception, none of the
6 individual defendants has family, property, telephones, or licenses in
7 Oregon. All defendants have offices outside Oregon, and all were
8 served outside Oregon.

9 De Vogel has taken fewer than ten trips to Oregon, each relating
10 generally to CMC's acquisition of Coe. Wright has traveled to Oregon
11 four times on business and once on vacation, with each trip lasting
12 less than four days. Weld has taken fourteen business trips to Oregon
13 related to the acquisition of Coe, each lasting no more than two days.
14 Weld has taken one personal vacation to Oregon. Uhrig has taken two
15 business trips to Oregon related to Coe, for a total of no more than
16 four days. Hornbarger has taken six trips to Oregon for no more than
17 three days at a time, all generally related to the Coe acquisition.

18 Dillenback and Wojtila are officers of Coe and have visited Coe's
19 Oregon facility on several occasions. Dillenback has taken less than
20 twenty trips to Oregon for business purposes related to Coe. Wojtila
21 has taken seven trips to Oregon, all since 2001 and all related to Coe.

22 Based on the infrequent and sporadic contacts these individuals
23 have with Oregon, I find general personal jurisdiction lacking over
24 these individual defendants.

25 Wentworth was a resident of Oregon from 1960 to 1964 and from 1978
26 to 1979. Wentworth owns one building lot in Oregon, but maintains no
27 residence, office, bank account, or telephone listing in Oregon.
28 Wentworth has no Oregon license and has not paid Oregon state income

1 taxes since 1979. Since 1979, Wentworth has made two or three business
2 trips a year to Oregon, with the vast majority being business trips.
3 Approximately five of those trips were related to CMC or Coe.

4 Although ownership of property in Oregon and frequent business
5 trips could potentially support the exercise of general jurisdiction
6 over Wentworth, "the mere presence of property in a State does not
7 establish a sufficient relationship between the owner of the property
8 and the State to support the exercise of jurisdiction over an unrelated
9 cause of action." Rush v. Savchuck, 444 U.S. 320, 328 (1980) (citing
10 Shaffer v. Heitner, 433 U.S. 186, 209 (1977)). Plaintiff provides no
11 additional evidence relevant to Wentworth's property ownership or
12 business dealings in Oregon to support general jurisdiction over him.

13 B. Specific Jurisdiction

14 Defendants argue that specific jurisdiction is lacking, because
15 defendants did not purposefully avail themselves of the benefits of
16 Oregon, and plaintiff's claims for relief do not arise out of
17 defendants' contacts with Oregon. Plaintiff contends that the court
18 may exercise specific jurisdiction over all defendants, because TCR
19 directed its activities at plaintiff in Oregon, and plaintiff's claims
20 arise from TCR's conduct in and directed at Oregon.

21 1. TCR and Fund III Investors

22 Plaintiffs must first set forth facts establishing purposeful
23 availment on the part of TCR and the Fund III Investors. Purposeful
24 availment is shown "if the defendant has taken deliberate action within
25 the forum state or if he has created continuing obligations to forum
26 residents." Ballard, 65 F.3d at 1498. Although contacts that are
27 "isolated" or "sporadic" may support specific jurisdiction if they
28 create a "substantial connection" with the forum, the contacts must be

1 more than random, fortuitous, or attenuated. Burser King, 471 U.S. at
2 472-73, 475.

3 Plaintiff argues that TCR and the Fund III Investors purposefully
4 availed themselves of this forum by entering into negotiations with
5 plaintiff regarding the acquisition of Coe. Representatives of TCR,
6 including de Vogel and Weld, traveled to Oregon to negotiate the sale
7 of Coe and witness the closing of the Stock Purchase Agreement.
8 Plaintiff also relies on several trips to Oregon taken afterward by de
9 Vogel, Weld and Uhrig regarding Coe business. Plaintiff further argues
10 that TCR and the Fund III Investors directed their activities at Oregon
11 through TCR's dilution of CMC's stock in order to deprive plaintiff of
12 a remedy against CMC.

13 Purposeful availment may be established "if the defendant
14 'performed some type of affirmative conduct which allows or promotes
15 the transaction of business within the forum state.'" Harris Rutskv
16 & co. Insurance Services, 328 F.2d at 1130 (quoting Sher, 911 F.2d at
17 1362). Here, TCR - through its officers and directors - conducted
18 contract negotiations in Oregon with plaintiff, an Oregon resident.
19 Further, as alleged by plaintiff, TCR's contacts in Oregon may be
20 attributed to the Fund III Investors. Plaintiff asserts that TCR is
21 the agent of the Fund III Investors, and defendants acknowledge that
22 TCR "manages" the Funds III Investors and acted on their behalf in
23 negotiating the purchase of Coe. See Chan, 39 F.3d at 1405 (to
24 establish minimum contacts through an agent, plaintiff must make a
25 *prima facie* showing that agent was acting on behalf of principal in
26 connection with forum state).

27 However, a contract alone does not automatically establish the
28 requisite minimum contacts necessary for the exercise of personal

1 jurisdiction, particularly when, as here, TCR was not a party to the
2 contract. Burger King, 471 U.S. at 478. Instead, the court must
3 evaluate "prior negotiations and contemplated future consequences,
4 along with the terms of the contract and the parties' actual course of
5 dealing" to determine whether TCR purposefully established minimum
6 contacts. Id. at 479. While it is true that TCR, through its officers
7 and directors, conducted contract negotiations with plaintiff over
8 several months, this conduct does not suffice to show "deliberate" and
9 "substantial" contacts with the forum. TCR is not a party to the
10 contract; therefore, it created no continuing obligations with a forum
11 entity and derives no benefits from the Oregon choice-of-law provision
12 in the Stock Purchase Agreement. Id. at 476, 481. Plaintiff thus
13 fails to show purposeful availment based on TCR's negotiations
14 conducted in Oregon.

15 Nevertheless, plaintiff maintains that CMC's contacts with this
16 forum may be imputed to TCR as its alter ego, because TCR exercised
17 control over CMC in order to deprive plaintiff of a remedy against CMC.
18 Plaintiff insists that this court may exercise specific jurisdiction
19 over defendant, "[b]ecause TCR diluted CMC's ownership of Coe for the
20 express purpose of moot[ing] the dispute" with plaintiff. Plaintiff's
21 Response to Defendants' Memorandum Regarding Coe Manufacturing
22 Company's Capital Infusion, p. 6.

23 A court may exercise personal jurisdiction over a parent
24 corporation when its subsidiary is subject to the court's jurisdiction
25 and the subsidiary acts as the parent's "alter ego" so as to justify
26 disregard of the corporate form. Rice v. Oriental Fireworks Co., 75
27 Or. App. 627, 632, 707 P.2d 1250, 1255 (1985) ("[A] corporation's
28 identity may be disregarded for purposes of maintaining jurisdiction

1 over controlling shareholders."). "The principle is simple enough:
2 '[I]f the corporation is [the shareholder's] alter ego, its contacts
3 are [the shareholder's] and due process is satisfied.'" Id. (quoting
4 Lakota Girl Scouts C., Inc. v. Havev Fund-Raising Management, Inc., 519
5 F.2d 634, 637 (8th Cir. 1975)).

6 Three criteria must be met to impose liability under the alter ego
7 theory: "(1) the shareholder must have controlled the corporation; (2)
8 the shareholder must have engaged in improper conduct in his exercise
9 of control over the corporation; and (3) the shareholder's improper
10 conduct must have caused the plaintiff's inability to obtain an
11 adequate remedy from the corporation." Rice, 75 Or. App. at 632, 707
12 P.2d at 1255 (citing Amfac Foods v. Int'l. Svstems, 294 Or. 94, 108,
13 654 P.2d 1092, 1101 (1982)).⁴ "[T]he party seeking to establish
14 personal jurisdiction need only make a *prima facie* showing, through
15 affidavits and supporting materials, of the facts necessary to meet

16

17 ⁴In the Ninth Circuit, the law of the forum state applies in
18 determining whether a corporation is an alter ego of another. Towe
19 Antique Ford Found. v. IRS, 999 F.2d 1387, 1391 (9th Cir. 1993). TCR
20 maintains that Delaware law governs the issue alter ego liability,
because both TCR and CMC were incorporated in Delaware. Oregon's choice
of law rules do not address whether the law of the incorporating state
or the law of the forum state governs the issue of alter ego liability.

21 However, I find the applicable standards of alter ego liability in
22 Delaware to be similar, if not the same, as Oregon law. See Outokumpu
Ensineering Enterprises, Inc. v. Kvaerner Enviropower, Inc., 685 A.2d
23 724, 729 (Del. Super. 1996) ("Because it is analogous to veil piercing,
the alter ego theory requires that the corporate structure cause fraud
or similar injustice. Mere dominion and control of the parent over the
subsidiary will not support alter ego liability. The 'injustice' must
be more than the breach of contract alleged in the complaint, or even
the burden of bringing the action in another forum.") (citations
24 omitted); Skouras v. Admiralty Enterprises, Inc., 386 A.2d 674, 681
25 (Del. Ch. 1978) ("Mere control and even total ownership of one
corporation by another is not sufficient to warrant the disregard of a
26 separate corporate entity. Absent a showing of a fraud or that a
subsidiary is in fact the mere alter ego of the parent, a common central
27 management alone is not a proper basis for disregarding separate
28 corporate existence.") (citations omitted).

1 those criteria." Rice, 75 Or. App. at 632, 707 P.2d at 1255.

2 Plaintiff argues that he has established a prima facie case of
3 alter ego liability because: 1) TCR controlled CMC; 2) TCR caused CMC
4 to dilute CMC's stock ownership in Coe through the issuance of Coe
5 preferred stock; and 3) TCR took such action to deprive plaintiff of
6 a remedy against CMC for breach of the Seller Note and Guaranty.

7 Plaintiff's contention that CMC is the alter ego of TCR cannot
8 succeed for the simple fact that TCR is neither a shareholder nor the
9 parent corporation of CMC. Generally, the theory of alter ego
10 liability is premised on ownership of the corporation; it provides a
11 means by which shareholders of a corporation may be held liable for the
12 actions of the corporation. See Amfac Foods, 294 Or. at 105, 654 P.2d
13 at 1099 ("This court has stated the rule that under some circumstances
14 corporate shareholders who control and dominate a corporation may be
15 held personally liable if the corporation is a mere 'instrumentality'
16 or 'alter ego' and where fraud or injustice has resulted."). As
17 alleged in the complaint and conceded by plaintiff, the Fund III
18 Investors own ninety-five percent of CMC stock and Composicorp Holdings
19 owns the remaining five percent. While the facts presented suggest
20 that TCR through de Vogel made decisions and communicated with
21 plaintiff on CMC's behalf, plaintiff fails to explain how TCR
22 "controls" CMC in the absence of a controlling ownership interest.

23 Curiously, plaintiff advances his theory of alter ego liability
24 without addressing the question of whether the court may impose
25 liability on an entity which is not the owner, parent, or shareholder
26 of a corporation. TCR's lack of ownership interest would require
27 reliance on a variation of the alter ego theory premised on "equitable
28 ownership" as recognized by several jurisdictions:

1 [W]hen there is active and direct participation by the
2 representatives of one corporation, apparently exercising
3 some form of pervasive control, in the activities of another
4 and there is some fraudulent or injurious consequence of the
5 intercorporate relationship, or . . . when there is a
6 confused intermingling of activity of two or more
7 corporations engaged in a common enterprise with substantial
8 disregard of the separate nature of the corporate entities,
9 or serious ambiguity about the manner and capacity in which
10 the various corporations and their respective representatives
11 are acting, . . . a court "need not consider with nicety
12 which of them" ought to be held liable for the act of one
13 corporation "for which the plaintiff deserves payment."
14

15 My Bread Baking Co. v. Cumberland Farms, Inc., 233 N.E.2d 748, 752
16 (Mass. 1968) (citation omitted); see Freeman v. Complex Computing, 119
17 F.3d 1044, 1051 (2d Cir. 1997) ("New York courts have recognized for
18 veil-piercing purposes the doctrine of equitable ownership, under which
19 an individual who exercises sufficient control over the corporation may
20 be deemed an 'equitable owner,' notwithstanding the fact that the
21 individual is not a shareholder of the corporation."); Oman Int'l
Finance Ltd. v. Hoivong Gems Corp., 616 F. Supp. 351, 363 (D. R.I.
22 1985) (the separateness of corporate entities "will be respected unless
23 the totality of circumstances surrounding their relationship indicates
24 that one of corporations 'is so organized and controlled, and its
25 affairs are so conducted, as to make it merely an instrumentality,
26 agency, conduit, or adjunct of [the other]/*") (quoting Vucci v. Meyers
Bros. Parking System, Inc., 494 A.2d 530, 536 (R.I. 1985)).

27 However, plaintiff does not argue or present evidence that TCR
28 dominates CMC - through voting or dispository powers, for example - to
such an extent that it may be deemed the equitable owner of CMC.
Further, it is questionable whether this theory is or would be
recognized by Oregon courts. See Rice, 75 Or. App. at 632, 707 P.2d
at 1255 (explaining criteria to assert "shareholder" liability under
alter ego theory); cf., Securities and Exchange Comm'n v. Hickey, 322

1 F.3d 1123, 1128-29 (Under California law, "[o]wnership is a
2 prerequisite to alter ego liability, and not a mere factor or
3 guideline.").

4 The additional information provided by defendants regarding Coe's
5 capital infusion raises more questions than it answers and is of no
6 avail to plaintiff. Those documents reveal that TCF III, which owns
7 a controlling interest in CMC, purchased shares of Coe Funding for
8 \$3,000,000. In turn, Coe Funding purchased Coe's newly-issued
9 convertible preferred stock for \$3,000,000 to provide Coe with needed
10 capital. CMC approved the issuance of Coe stock with the apparent
11 knowledge that its ownership interest in Coe would be significantly
12 diluted. To be sure, these transactions raise the specter of improper
13 conduct in the exercise of control over CMC to deprive plaintiff from
14 obtaining a remedy. However, they do not establish *prima facie*
15 evidence of an alter ego relationship between TCR and CMC.

16 Even if the alleged facts support an inference that TCR managed
17 the Fund III Investors and "controlled" CMC on their behalf, plaintiff
18 fails to explain how the relationship between TCR and the Fund III
19 Investors provides a basis to impute CMC's Oregon contacts to TCR.
20 Plaintiff does not allege or offer facts to show that TCR has a
21 controlling interest in TCF III or the other Fund III Investors;
22 rather, plaintiff asserts that TCR acts as their agent. Likewise,
23 plaintiff does not allege that the CMC is the alter ego of the Fund III
24 Investors, or that the Fund III Investors exerted improper control over
25 CMC - through TCR - to deprive plaintiff of a remedy.⁵ Indeed, the

26
27 "In one section of his response to defendants' motions, plaintiff
28 states that "defendants" control CMC and diluted CMC's stock ownership
in Coe. Plaintiff's Memorandum in Opposition to Defendants' Motion to
Dismiss, p. 13. However, as alleged in plaintiff's Complaint and argued

1 holding and management structure of TCR, the Fund III Investors, and
2 their various affiliates poses factual complexities that neither party
3 endeavors to elucidate. Ultimately, however, it the plaintiff's burden
4 to present a *prima facie* showing of jurisdictional facts.

5 It is undisputed that neither TCR nor the Fund III Investors were
6 parties to the contract between plaintiff and CMC. It is undisputed
7 that the Fund III Investors, not TCR, own a controlling interest in
8 CMC. It is also undisputed that TCF III, not TCR, formed Coe Funding
9 to purchase the shares of Coe, and that CMC - owned by the Fund III
10 Investors - approved the sale of Coe preferred stock to Coe Funding.
11 Clearly, TCR played a role in facilitating the contract between CMC and
12 plaintiff and the transactions between TCF III, Coe Funding and Coe.
13 Nevertheless, absent evidence that TCR possesses an ownership interest
14 in CMC or that TCR controls CMC to the extent that it may be deemed
15 CMC's equitable owner, I cannot find that CMC is a mere
16 "instrumentality" or alter ego of TCR. Accordingly, plaintiff cannot
17 establish purposeful availment by TCR or the Fund III Investors by
18 virtue of CMC's contacts with plaintiff and this forum.

19 However, I find that plaintiff asserts purposeful availment based
20 on TCR's allegedly tortious conduct directed at plaintiff for the
21 purpose of interfering with plaintiff's agreement with CMC. Under the
22 so-called "effects test," jurisdiction may be properly asserted over
23 a defendant who intentionally directs conduct toward the forum state,
24 knowing the effects of the conduct will cause harm. Calder v. Jones,
25 465 U.S. 783, 789-90 (1984); Panavision Int'l L.P. v. Toeppen, 141 F.3d
26

27 throughout plaintiff's responsive memorandum, plaintiff asserts that CMC
28 was the alter ego of only TCR and that only TCR controlled CMC. Therefore, I do not construe this statement to allege alter ego
liability against the Fund III Investors.

1 1316, 1321 (9th Cir. 1998). Plaintiff alleges that TCR slandered
2 plaintiff through its accusations that plaintiff made fraudulent
3 misrepresentations as to the Coe's worth. Plaintiff further alleges
4 that TCR's tortious actions caused CMC to repudiate and suspend payment
5 under the Seller Note and Guaranty. Taken as true, plaintiff's
6 allegations establish intentional conduct by TCR essentially aimed at
7 plaintiff in Oregon. Thus, I find that TCR's alleged actions suffice
8 to establish purposeful availment.

9 To meet the second prong of specific jurisdiction, plaintiff must
10 establish that TCR's forum activities gave rise to plaintiff's claims.
11 In other words, plaintiff must show that but for TCR's tortious conduct
12 directed at Oregon, plaintiff's claims against defendants would not
13 have risen. Ballard, 65 F.3d at 1500. Plaintiff claims that TCR's
14 conduct in Oregon gives rise to his claims for rclief, because his
15 claims relate to the Stock Purchase Agreement negotiated by TCR.
16 Plaintiff asserts that "[b]ut for TCR's actions, [plaintiff] would not
17 have entered into an agreement with CMC, that TCR caused to be
18 breached, and would have been able to obtain judgment and to collect
19 his judgment by foreclosing on CMC's assets - 100% of the stock of
20 Coe." Plaintiff's Response to Defendants' Motion to Dismiss, p. .

21 Plaintiff's claims for breaches of the Seller Note and Guaranty,
22 breach of the duty of good faith and fair dealing alleged against TCR
23 do not arise from TCR's tortious conduct directed at plaintiff.
24 Rather, only plaintiff's claim of tortious interference with a contract
25 arose from TCR's allegedly slanderous statements. This claim does not
26 rely an alter ego theory of liability, and I find that plaintiff
27 sufficiently alleges that but for TCR's allegedly slanderous comments
28 directed at plaintiff in Oregon, plaintiff's claim for tortious

1 inference would not have arisen. However, plaintiff fails to show that
2 his claims for breach of the Seller Note and Guaranty and tortious
3 breach of the covenant of good faith and fair dealing arise from TCR's
4 contacts with Oregon.

5 Having found that plaintiff satisfies the first two prongs of
6 specific jurisdiction regarding his claim of tortious inference, the
7 burden now shifts to TCR to "present a compelling case that the
8 presence of some other considerations would render jurisdiction
9 unreasonable." Panavision Int'l, 141 F.3d at 1322 (quotation marks and
10 citation omitted). Factors relevant in determining reasonableness
11 include:

12 (1) the extent of a defendant's purposeful interjection; (2)
13 the burden on the defendant in defending in the forum; (3)
14 the extent of conflict with the sovereignty of defendant's
15 state; (4) the forum state's interest in adjudicating the
dispute; (5) the most efficient judicial resolution of the
controversy; (6) the importance of the forum to plaintiff's
interest in convenient and effective relief; (7) the
existence of an alternative forum.

16 Id. at 1323.

17 I find that the first and third factors do not weigh heavily in
18 favor of either plaintiff or defendant. TCR sought out a business
19 relationship with plaintiff on behalf of the Fund III Investors;
20 however, these limited contacts do not represent purposeful
21 interjection into Oregon to a great extent. Further, given the fact
22 that TCR's conduct occurred in New York and was allegedly directed at
23 plaintiff for the purpose of interfering with an Oregon contract, I
24 discern no conflict with the sovereignty of Delaware.

25 The second, fifth and seventh factors favor dismissal. None of
26 the corporations involved are Oregon corporations. Coe is an Ohio
27 corporation, and CMC and TCR are Delaware corporations. No party other
28

1 than plaintiff resides in Oregon and the majority of witnesses and
2 documents relevant to this action reside or are located outside Oregon.
3 Therefore, TCR will carry a greater burden defending this action in
4 Oregon. For these reasons, I cannot find that Oregon is the most
5 efficient forum for this litigation. Finally, an alternative forum for
6 plaintiff exists.

7 **Nevertheless, the fourth and sixth factors weigh in favor of**
8 asserting jurisdiction. This forum possesses an interest in
9 adjudicating a dispute involving an Oregon resident and most likely
10 governed by Oregon law. Further, as a resident of this forum, it is
11 important that plaintiff have convenient and effective relief.
12 Therefore, I find that TCR fails to show that assertion of personal
13 jurisdiction with respect to plaintiff's claim of tortious interference
14 is unreasonable.

15 2. Individual Defendants

16 Plaintiff argues that specific jurisdiction over the **individual**
17 defendants is established through their contacts with Oregon in
18 negotiating the Stock Purchase Agreement and through their subsequent
19 travel to Oregon on Coe business.

20 Plaintiff presents insufficient evidence to show that the
21 individual defendants purposefully availed themselves, as individuals,
22 of the privileges of conducting business in Oregon. Granted, the
23 **individual defendants traveled to Oregon to negotiate the acquisition**
24 **of Coe,** to attend Board meetings of Coe, and to view the Coe facility
25 in Oregon. See Declarations of de Vogel, Dillenback, Hornbarger,
Uhrig, Weld, Wentworth, Wojtila, and Wright. However, each individual
was acting in his capacity as an officer or director of TCR, CMC, or
Coe. "[A] corporate officer who has contact with a forum only with

regard to the performance of his official duties is not subject to personal jurisdiction in that forum." Kransco Mfg., Inc. v. Markwitz, 656 F.2d 1376, 1379 (9th Cir. 1981) (quoting Forsythe v. Overmyer, 576 F.2d 779, 783-84 (9th Cir. 1978)). Plaintiff does not allege that any individual defendant acted on his own behalf or that any individual defendant disabused the corporate form for his personal gain.

Alternatively, plaintiff attempts to attribute TCR's Oregon contacts to individual defendants de Vogel, Wright, Uhrig, and Weld under principles of partnership. Plaintiff asserts that TCR represents that it is a partnership, with these individual defendants identified as "partners." Plaintiff relies on a brochure explaining that TCR is "managed by a partnership," and that it "currently has five full equity partners." Paulson Affidavit, Ex. 1, pp. 1, 16. TCR identified "Investment Team" includes "Partners" Uhrig, de Vogel, Weld, and Wright. Id. at p. 14. TCR responds that, as alleged in plaintiff's Complaint, TCR is a corporation and therefore principles of partnership do not apply. I agree. Although TCR may refer to certain persons as "partners" in its promotional brochures, plaintiff presents no evidence that TCR is a partnership.⁶

C. Failure to State a Claim

Plaintiff allege that TCR intentionally interfered with the contract between plaintiff and CMC, in that TCR made slanderous misrepresentations about plaintiff which caused CMC to withhold

"Even if plaintiff presented evidence that TCR was a partnership, "[l]iability and jurisdiction are independent. Liability depends on the relationship between the plaintiff and the defendants and between the individual defendants; jurisdiction depends only upon each defendant's relationship with the forum." Sher, 911 F.2d at 1365. Thus, "[r]egardless of their joint liability, jurisdiction over each defendant must be established individually." Id.

1 payments due under the Purchase Agreement. TCR argues that plaintiff
2 fails to state a claim under which relief may be granted, because
3 plaintiff fails to identify false statements uttered by TCR or that its
4 statements caused CMC to withhold payments under the Seller Note and
5 Guaranty.

6 Under Oregon law, a party may recover damages for wrongful
7 interference with a contract. Wampler v. Palmerton, 250 Or. 65, 439
8 P.2d 601 (1968). The interest protected by the tort is "the interest
9 of the individual in the security and integrity of the contractual
10 relations into which he has entered." Id. at 73, 439 P.2d at 605. To
11 state a claim for intentional interference with a contract, plaintiff
12 must allege the following elements:

13 (1) the existence of a professional or business relationship
14 (which could include, e.g., a contract or a prospective
15 economic advantage), (2) intentional interference with that
16 relationship, (3) by a third party, (4) accomplished through
improper means or for an improper purpose, (5) a causal
effect between the interference and damage to the economic
relationship, and (6) damages.

17 McGanty v. Staudenraus, 321 Or. 532, 535, 901 P.2d 841, 844 (1995).
18 Here, plaintiff alleges that TCR intentionally interfered with
19 plaintiff's agreement with CMC. Plaintiff claims that TCR made
20 slanderous comments that plaintiff materially misrepresented Coe's
21 financial status and fraudulently induced CMC to enter into the Stock
22 Purchase Agreement, and that CMC repudiated the contract and suspended
23 payment to plaintiff as a result. Thus, I find that plaintiff
24 sufficiently states a claim for tortious interference.

25 TCR counters that the allegedly slanderous statements were made
26 in support of CMC's counterclaims of fraud and misrepresentation and
27 are therefore privileged. However, as evidenced by de Vogel's letter
28 of October 27, 2000, these statements were made prior to plaintiff's

1 lawsuit against CMC; in fact, plaintiff alleges that these statements
2 led to CMC's breach of Guaranty and the Seller Note.

3 Defendants also argue that the alleged statements are protected
4 as communications of mutual concern. An alleged defamatory statement
5 is subject to a qualified or conditional privilege if it pertained to
6 a subject of mutual concern to the defendant and the person to whom the
7 statement was made. Wattenburg v. United Medical Lab., 269 Or. 377,
8 380, 525 P.2d 113, 114 (1974). However,

9 [T]he privilege may be lost if the speaker does not believe
10 that the statement is true or lacks reasonable grounds to
believe that it is true; if it is published for a purpose
other than that for which the particular privilege is given;
11 if the publication is made to some person not reasonably
believed to be necessary to accomplish the purpose; or if the
12 publication includes defamatory matter not reasonably
believed to be necessary to accomplish the purpose.

13 Lund v. Arbonne International, Inc., 132 Or. App. 87, 96, 887 P.2d 817,
14 824 (1994).

15 Here, TCR claims that any statements made were of mutual concern
16 to TCR and CMC, because plaintiff alleges that TCR controlled CMC.
17 However, **TCR fails to provide factual support for the assertion that**
18 **such statements were of mutual concern, particularly in light of the**
19 **fact that TCR possesses no ownership interest in CMC.** Moreover, as
20 plaintiff points out, whether TCR's statements are conditionally
21 privileged involves questions of fact which cannot be resolved on a
22 motion to dismiss. Therefore, TCR's motion to dismiss for failure to
23 state a claim for tortious interference is denied.

24 ///

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28

CONCLUSION

With the exception of his claim for tortious interference with a contract alleged against TCR, plaintiff fails to set forth jurisdictional facts to support the exercise of personal jurisdiction over defendants. Accordingly, defendants' Motions to Dismiss for Lack of Personal Jurisdiction (docs. 19 and 21) are GRANTED, in part. Plaintiff's following claims are HEREBY DISMISSED:

1. Plaintiff's First and Second Claims for Relief asserted against Three Cities Research, Inc., Three Cities Fund III, LP, TCR Friends III, LP, and TCR Co-Investors, LLC, TCR GP, LLC, TCR Management, Inc., and all individual defendants;

2. Plaintiff's Third Claim for Relief asserted against individual defendants Willem F.P. de Vogel, W. Robert Wright, Thomas G. Weld, and J. William Uhriq;

3. Plaintiff's Fourth Claim for Relief asserted against Three Cities Research, Inc. and individual defendants Willem F.P. de Vogel, W. Robert Wright, Thomas G. Weld, and J. William Uhriq; and

4. Plaintiff's Fifth Claim for Relief asserted against all individual defendants.

Plaintiff's Motion to Compel Production of Documents (doc. 50) is DENIED as moot.

IT IS SO ORDERED.

Dated this 2 day of July, 2003.

Ann Aiken)

Ann Aiken
United States District Judge